IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1389 OF 2006

The State of Maharashtra ..... Applicant.

V/s

Zusar Nalwalla & Ors. ..... Respondents.

Mr. Y.S. Shinde, APP for the State.

Mr. V.S. Rajguru for Respondent Nos. 1 to 3.

CORAM: V.M. KANADE, J.
DATE : 11th September, 2007

P.C.:

1. Heard the learned APP for the State and the learned Counsel for respondent Nos. 1 to 3.

2. Applicant - State takes exception to the order passed by the Sessions Court dated 12/01/2005 whereby the application filed by the prosecution for production of certain documents was rejected by the Sessions Court by the said order. It is the case of the prosecution that certain documents remained to be annexed and filed along with charge-sheet and, thereafter, having realized this fact, an application was made in the Sessions Court after the case was committed to it by the Magistrate to permit the prosecution to bring these documents on record. This was opposed by defence counsel. The Sessions Court upheld the objections by observing that Criminal Procedure Code provides for trial to be conducted at various stages as provided under

various chapters of the Criminal Procedure Code. It is submitted that since the charge-sheet was filed and the document on which reliance was placed by the prosecution was annexed to the charge-sheet, it was not open for the prosecution to take the accused by surprise by producing certain documents. The learned APP appearing on behalf of the State relied upon the judgment of the Apex Court in State of Orissa Vs. Debendra Nath Padhi reported in **(2005) 1 SCC 568.**

3. The learned Counsel appearing on behalf of Respondent Nos. 1 to 3, on the other hand, submitted that serious prejudice would be caused to the accused if these documents are allowed to be produced at this stage, particularly because trail had already commenced and three witnesses were already examined when the present application was filed and, as such, the Sessions Court was justified in rejecting the said application.

4. In my view, submissions made by the learned Counsel appearing on behalf of Respondent Nos. 1 to 3 cannot be accepted. It is no doubt true that Criminal Procedure Code lays down the stages in which the criminal trial has to proceed and that the stage of tendering document on which reliance is placed by the prosecution when the charge-sheet is filed under section 173 of the Criminal Procedure Code. However, in my view, there is no specific bar imposed on the prosecution from producing the documents at subsequent stage before conclusion of the trial and, as such, it cannot be said that in each and every case such an application which is filed at belated stage is liable to be rejected. The only safeguard which the

accused is entitled in such cases is to ensure that sufficient opportunity is given to him to examine the said documents in order to enable him to cross-examine the witnesses who were already examined or to cross-examine the witnesses who are sought to be examined after production of these documents. If no prejudice is caused, the prosecution cannot be denied an opportunity to establish its case beyond the reasonable doubt before the Sessions Court. The accused, no doubt, has a right to have a fair trial in or to ensure that a proper opportunity is given to him to defend himself. At the same time, it cannot be said that the prosecution has no right to establish its case in Court.

5. In the present case, for reasons stated in the application by the prosecution, documents were not produced alongwith the charge-sheet. No prejudice would be caused to the accused if these documents are allowed to be produced and sufficient opportunity is given to the accused to cross-examine the witnesses who were already examined or subsequent witnesses who are likely to be examined by the prosecution. The Sessions Court, in my view, therefore erred in passing the said order and failed to exercise jurisdiction which was vested in it by law by refusing to allow the prosecution to produce these documents.

6. In the result, the impugned order is set aside. Application filed by the prosecution is allowed. Respondents 1 to 3, however, shall be at liberty if they so desire to cross-examine the witnesses which are already examined by the prosecution. With these directions Criminal

Application is allowed.

(V.M. KANADE, J.)